

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8247 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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POONAMBHAI MADHABHAI PARMAR

Versus

DISTRICT DEVELOPMENT OFFICER

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Appearance:

1. Special Civil Application No. 8247 of 1998  
MR ARUN H MEHTA for Petitioner No. 1  
MR HS MUNSHAW for Respondent No. 1  
GOVERNMENT PLEADER for Respondent No. 2  
DELETED for Respondent No. 3
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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 16/08/2002

ORAL JUDGEMENT

The petitioner, Sarpanch of Tarapur Gram

Panchayat, was aggrieved by his removal from his office by respondent No. 1 by an order dated 1.6.1998. The said order of removal was confirmed by the Addl. Development Commissioner by dismissing an appeal filed by the petitioner. Being aggrieved by the order passed by the Addl. Development Commissioner dated 24.9.98, the petitioner has approached this court.

2. The facts giving rise to the present petition, in a nutshell, are as under :

3. The petitioner was elected as Sarpanch of Tarapur Gram Panchayat and had taken charge of his office on 19.7.1995. In the course of performance of his duties, according to the petitioner, he had executed certain resolutions, which had been passed by the Panchayat.

4. A notice dated 7.2.1998 was issued to the petitioner by respondent No. 1 calling upon him to show cause as to why he should not be removed from his office as he had abused his powers and had committed misconduct in performance of his duties. The following are the charges levelled against the petitioner.

4.1 Tarapur Gram Panchayat had constructed certain "nallas" and for that purpose the panchayat had spent Rs. 1,04,311/-. The said construction work was done without getting plan estimates or without getting necessary sanction. Moreover, purchases made for the purpose were not in accordance with rules and regulations.

4.2 The panchayat had resolved under Resolution No. 112 dt. 29.6.1996 that a panchayat pond be given on lease either for the purpose of growing 'shingoda' or for fishery. The said resolution had not been implemented and thereby loss was caused to the panchayat.

4.3 A statue of late Sardar Patel was to be unveiled in the village and for that purpose the TDO had sanctioned an expenditure of Rs. 30,000/- but, in fact, a sum of Rs. 52,916/- had been spent by the panchayat at the function. Thus, for the additional expenditure, no sanction was taken from the higher authority.

4.4 The panchayat had incurred an expenditure of Rs. 12,325/- for the purpose of repairing the electric motor fitted on the water works of the panchayat. Before incurring the said expenditure, no offer was invited by the panchayat or by the petitioner by giving an advertisement in the newspapers.

5. It may be noted here that the petitioner had challenged the validity of the show-cause notice by filing a petition, but the validity of the said show-cause notice was upheld by this court and the petitioner had given reply to the said show-cause notice.

6. In reply to the said show-cause notice, the petitioner had submitted that it was absolutely necessary for the panchayat to repair certain roads/nallas before monsoon. Several representations had been made to the panchayat for getting the said roads/nallas repaired and therefore under resolution No.9 dated 7.5.96, the panchayat had resolved to repair the roads/nalla as soon as possible and before the onset of monsoon. Looking to the necessity of the nalla, the panchayat had used some material which it was having and the panchayat had made all possible efforts to purchase the material required for the purpose of construction of the nalla at a low price and offers were invited for the purchase of cement, bricks etc. by giving an advertisement in a daily newspaper. The expenditure incurred by the panchayat for the purpose of construction of nalla had been sanctioned by the Grampanchayat in the same month. Thus, it was stated before the authority by the petitioner that the panchayat or the petitioner had not committed any error or had not violated any of the rules or regulations in the process of construction of the nalla.

7. For not leasing the village pond in pursuance of the panchayat's resolution dated 29.6.96, it was stated by the petitioner that he had obtained an expert's opinion and on the basis of that opinion it was found that it was not possible to use the pond for the purpose of fishery and it was also not possible to grow shingoda in the said pond. In the circumstances, it was of no use to do any formality or procedure for the purpose of inviting offers for leasing the pond. Moreover, during an earlier year, an effort was made for the purpose of giving the said pond on lease, but nobody had come forward to have the pond on lease. Therefore, according to the petitioner, giving an advertisement would have amounted to loss to the panchayat because even after giving an advertisement, nobody was likely to come forward to have the pond on lease.

8. So far as the third charge with regard to spending Rs. 20,916/- in excess of the estimated amount is concerned, it was stated in the reply that the said expenditure had been sanctioned by the panchayat in its General Body Meeting by giving retrospective permission. As a result of the said function, a sum of Rs.

4,50,000/- was collected. The said amount was to be used for the purpose of welfare of the panchayat and as a matter of fact, from the said amount rooms of a school belonging to the panchayat had been repaired, a crematorium was constructed and cement roads had also been laid. Thus, the stand of the petitioner in the reply was that a substantial amount had been raised for the purpose of development of the panchayat as a result of the said function and the amount, which was spent in excess, had already been sanctioned by the panchayat.

9. So far as the fourth charge is concerned, it was submitted in the reply that the electric motor, which had failed, was used for the purpose of supply of drinking water to the residents of the village. On account of the failure of the electric motor, it was not possible to supply drinking water to the villagers and that was likely to cause difficulties to the residents. As getting the electric motor repaired was of vital importance, within a period of 2 days, the said electric submersible motor was repaired. An effort was made to invite quotations and work with regard to repairs was given to a person, who had quoted the least amount. Thus, it had been submitted that in the interest of the residents of the Grampanchayat, the said repair works were undertaken immediately.

10. After hearing the petitioner, ultimately, respondent No. 1 had passed an order, whereby the petitioner was removed from the office of Sarpanch by an order dated 1.6.1998.

11. The order of removal passed by respondent No. 1 was challenged before this court by filing Special Civil Application No. 4973/98. The said petition had been rejected by this court as it was open to the petitioner to challenge the validity of the said order before the State of Gujarat. In the circumstances, the validity of the impugned order dated 1.6.98 was challenged by the petitioner. The appellate authority, being the Addl. Development Commissioner, had ultimately dismissed the appeal by an order dated 24.9.98. Being aggrieved by the said order passed in an appeal filed under the provisions of sec. 57(3) of the Act, the petitioner has approached this court.

12. Learned advocate Shri A.H. Mehta appearing for the petitioner has submitted that the impugned order of removal and the order passed in appeal are bad in law as no case has been made out for removal of the petitioner from the office of the Sarpanch. It has been submitted

by him that, according to the provisions of sec. 57 of the Act, a Sarpanch can be removed from the office only if he has been held guilty of misconduct in the discharge of his duties or if his conduct has been found to be disgraceful or if he has abused his powers or if he makes persistent defaults in performance of his duties and functions under the Act or if he has become incapable of performing his duties and functions under the Act. According to him, no case has been made out against the petitioner for taking any action under the provisions of sec. 57 of the Act. According to him, respondent No. 1 had passed the impugned order removing the petitioner from the office of the Sarpanch under the provisions of sec. 57 on the ground that the petitioner had abused his powers and he had committed misconduct. It has been submitted by him that, in fact the petitioner had neither abused his powers nor had he committed any misconduct.

13. While elaborating the submissions, the learned advocate has submitted that the petitioner had made all possible efforts to act effectively and efficiently and in the interest of the panchayat while performing his duties as Sarpanch. It has been submitted by him that so far as the first charge is concerned, the petitioner had got the plan and estimates prepared. According to him, without preparing the plan and/or estimate, the nallas, which had been broken, could not have been constructed. He frankly admitted the fact that technically, sanction from the higher or prescribed authority had not been obtained because that process was likely to take time, but the panchayat in its General Body Meeting had decided to do the said work because, if the nallas had not been repaired or constructed before the onset of monsoon, several residents of the village would have found it difficult or rather impossible to reach their houses because of the water logging. Moreover, on account of water logging, certain residents of the village would have been separated from the village as the roads would have submerged into water. In the circumstances, the panchayat had passed a resolution to get the work done on a war footing. It has been further submitted by the learned advocate that necessary estimates had been prepared and copies of the said estimates have been annexed to the petition at page 34 and onwards. Thus, it has been submitted that factually it was not correct for respondent No. 1 to observe that the work with regard to construction of nalla was done without getting necessary estimates prepared.

14. So far as the allegation with regard to not giving the pond on lease for growing shingoda or for

development of fishery is concerned, it has been submitted that nobody had come forward to take the pond on lease during the earlier year as it was not possible to cultivate shingoda and it was also not possible to use the pond for fishery. Any advertisement given for inviting offers would have resulted into financial loss to the panchayat because in any case nobody was likely to come forward with an offer to have the pond on lease. In the circumstances, by not giving an advertisement, money of the panchayat was saved and no financial loss was caused to the panchayat.

15. So far as the third charge is concerned, it has been submitted by the learned advocate that though a sum of Rs. 20,916/- was spent in excess of the amount which was estimated, the panchayat had raised an amount exceeding Rs. 4,50,000/- by way of public contribution as a result of the said function, where residents of the village had been served dinner also. According to him, it was extremely difficult to know as to how many persons would attend the function for having the dinner and in such a function, where several dignitaries were invited, and in fact they had attended the function, so as to see that no difficulty is caused to any one, some additional arrangements had to be made in the function. It becomes impossible for any one to have an absolutely correct estimate from the beginning. It has been also added by him that the additional expenditure incurred by the panchayat for the function had been immediately sanctioned in the same month by a resolution passed by the panchayat unanimously. Thus, it has been submitted by him that the function had resulted into income of more than Rs. 4,50,000/- for the panchayat and from the said amount several works pertaining to the welfare of the residents of the village had been carried out. Thus, it has been submitted by him that it cannot be said that the petitioner had abused his powers or had committed any misconduct while spending Rs. 22,916/- more than the estimated amount.

16. So far as the last allegation with regard to incurring expenditure of Rs. 12,325/- for repairs of the electric motor attached to the water works is concerned, it has been submitted by him that without getting the electric motor repaired, the panchayat could not have performed its primary duty of supplying drinking water to its residents. Thus, it has been submitted by learned advocate Shri Mehta that it was absolutely necessary to get the electric motor repaired immediately. It has been submitted by him that quotations had been invited from the persons, who were doing business of repairing

electric motors in the vicinity, and only after considering the quotations, the one who had offered to do the work at the lowest rate was given the contract. It has been also submitted by him that there is no allegation with regard to excessive payment made by the panchayat for getting the repair work done. It has also not been alleged that the work was not done in a proper manner, but the only allegation is that an advertisement had not been given in the newspaper for inviting offers from more persons. It has been submitted that the petitioner-Sarpanch had acted in the interest of the residents and as a good administrator, and by resorting to formalities, which a bureaucrat would have done, possibly the residents of the village would have been deprived of water for a longer period.

17. I have heard the learned advocates and have also perused the judgment cited by the advocates. Looking to the facts of the case, it appears that it cannot be said that there was any dishonest intention on the part of the petitioner. Moreover, the petitioner cannot be said to be guilty of misconduct in the discharge of his duties or that he had acted in a disgraceful manner or had abused his powers or had made persistent defaults in performance of his duties.

18. So far as the first charge is concerned, it appears that it was absolutely necessary to get the nallas constructed because, if the nallas had not been constructed promptly, possibly some of the residents of the village would have been put to grave difficulties as they would have been separated from the village on account of water logging. It also does not appear to be true that no estimates had been prepared before getting the work pertaining to construction of nallas done. The learned advocate has drawn my attention to the estimates, which had been prepared by technical supervisor of Tarapur Grampanchayat. The said estimates are on record of this petition. Possibly, the said estimates were not shown to the DDO, but even the learned advocate appearing for the respondents could not dispute the fact that the estimates were duly prepared by the Technical Supervisor and, therefore, the allegation that without preparing estimates, the work with regard to construction of nallas was done is not correct. So far as technical sanction of the higher authority is concerned, it appears that the work was required to be done immediately and that too before the onset of monsoon. Possibly for that reason the panchayat was not having sufficient time as it appears from the record. The panchayat had passed a resolution in its General Body Meeting to get the said

work done as soon as possible and in fact it appears that before beginning of the monsoon the work with regard to construction of nallas had been completed. In the circumstances, it cannot be said that the petitioner had committed misconduct by not getting necessary sanction from the higher authorities before getting the work done or by implementing the resolution which was passed by the panchayat.

19. So far as implementation of resolution dated 29.6.1996 bearing No. 112 is concerned, it is clear that an effort had been made by the panchayat in the past for giving the ponds on lease so that the said pond can be used for fishery or for growing shingoda. The efforts made in the past had failed because nobody had come forward to take the said pond on lease. Thus, the amount spent for inviting offers by spending money was proved to be a wasteful expenditure. There was also an opinion to the effect it was not possible to grow shingoda in the said pond and it was also not possible to use the said pond for fishery. In the circumstances, a new advertisement was not given for inviting offers from persons who were interested either for growing shingoda or for using the pond for fishery.

20. So far as the third allegation is concerned, it has been rightly stated by the learned advocate for the petitioner that a dinner had been organized where residents of Tarapur Grampanchayat and other dignitaries had been invited. It is true that it was decided to spend Rs. 30,000/- for the purpose of organizing the function of unveiling the statue of late Sardar Patel. The learned advocate appearing for the petitioner was right when he submitted that it is extremely difficult in such situations to guess the exact number of persons attending the function and the dinner. In the circumstances, some amount in excess of the sanctioned amount had been spent by the panchayat. The panchayat had also sanctioned the additional expenditure over the already sanctioned amount by its resolution dated 29.9.1995 and thus the additional amount spent had been given retrospective sanction by the General Body of the panchayat. It could not be disputed by the learned advocate appearing for the respondents that on account of the function the panchayat could raise a huge amount of Rs. 4,50,000/- and the said amount had been in fact used for the purpose of doing development works in the village. From the said amount a crematorium had been constructed and rooms of the panchayat school had been repaired. Some of the roads which required major repairs were also repaired from the fund which had been raised.

21. So far as the last allegation with regard to spending money for getting the water works motor repaired, without giving public advertisement for inviting offers from persons doing such work is concerned, it appears that the said act would also not amount to misconduct. Had the petitioner or the panchayat taken more time in getting the said work done by giving public advertisement, the residents of Tarapur Grampanchayat would have been deprived of drinking water because it is an admitted fact that the electric motor, which was to be repaired, was used by the panchayat for the purpose of supply of drinking water to the residents of Tarapur Grampanchayat. It is not in dispute that quotations had been invited from the persons, who were in such a business in or around the village. There is no allegation to the effect that huge amount had been spent for getting the motor repaired or that the motor was not repaired properly. On the contrary, by taking prompt action, the petitioner and the panchayat had acted in the interest of the residents. One has to be prompt in taking such decisions because if delay is caused and if the electric motor is not repaired immediately, the residents would have suffered without drinking water.

22. Thus, it is very clear that the allegations levelled in the show-cause notice and the findings arrived at in the impugned orders do not denote that the petitioner was guilty of committing misconduct. Even if we peruse the judgment delivered by this court in the case of Kamlaben Rohitbhai Patel v. Additional Development Commissioner, 2000(2) GLR 1174, it is very clear that there must be misconduct or disgraceful conduct or abuse of powers or persistent default in the performance of duties before any action can be initiated against any sarpanch under the provisions of sec. 57(1) of the Act. Looking to the law laid down by this court in the said judgment, it cannot be said that there was any misconduct on the part of the petitioner. According to the provisions of sec. 57(1) of the Act, the sarpanch should be guilty of misconduct in the discharge of his duties. Upon perusal of the impugned orders, by no stretch of imagination it can be said that the petitioner had committed misconduct in the discharge of his duties. The petitioner had tried to act in the interest of the residents of the village on all occasions. He had tried to implement the just resolutions passed by the panchayat. Even if one looks at the resolutions passed by the panchayat, it cannot be said that the resolutions, which were ultimately implemented by the petitioner-Sarpanch, had been passed with some oblique

motive or with an intention to put the panchayat to financial loss. All the resolutions had been passed in the interest of the residents of the village panchayat. The promptness with which the petitioner had worked should not be a reason for his removal from the office. Upon perusal of the record, no one can say that the petitioner was guilty of misconduct in the discharge of his duties or his conduct was disgraceful or he had abused his powers or had made persistent defaults in performance of his duties and functions under the Act.

23. Looking to the above facts, the impugned orders cannot be sustained. The impugned order removing the petitioner from the post of Sarpanch dated 1.6.1998 and the order confirming the said order dated 24.9.1998 are hereby quashed and set aside.

The petition is allowed. Rule is made absolute with no order as to costs.

(A.R. Dave, J.)

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